



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS-LPS-15-0084]

Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) by adding six Harmonized Tariff Schedule (HTS) codes for imported veal and veal products and updating assessment levels for imported veal and veal products based on revised determinations of live animal equivalencies. In addition to the foregoing, the Agricultural Marketing Service (AMS) is amending the Order's definition of "Imported beef or beef products" by deleting its reference to tariff numbers that are no longer in use and obsolete.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mike Dinkel, Agricultural Marketing Specialist, Research and Promotion Division, Livestock, Poultry, and Seed Program; AMS, USDA; Room 2610-S, STOP 0249, 1400 Independence Avenue, SW.; Washington, D.C. 20250-0249; fax (202) 720-1125; telephone (301) 352-7497; or email Michael.Dinkel@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 et seq.], the Acting Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule does not have a significant economic impact on a substantial number of small business entities. The effect of the Order upon small entities was discussed in the July 18, 1986, Federal Register [51 FR 26132]. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Based on conversations with importing companies, AMS estimates that approximately 270 importers import beef and beef products and veal and veal products into the U.S. and about 198 importers import live cattle into the U.S. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of \$7.5 million or

less.

This final rule imposes no significant burden on the industry. Importers are already required to pay assessments. It merely adds six HTS codes for imported veal and veal products and updates assessment rates for imported veal and veal products based on revised determinations of live animal equivalencies. The addition of HTS codes reflects an increase of imported veal and veal products into the U.S. Accordingly, the Acting Administrator of AMS has determined that this action does not have a significant impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act [7 U.S.C. 2910] provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any state. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB under OMB control number 0581-0093.

Background

The Act authorized the establishment of a national beef promotion and research program. The final Order was published in the Federal Register on July 18, 1986 [51 FR 21632], and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board), appointed by the Secretary of Agriculture (Secretary) from industry nominations, and composed of 100 cattle producers and importers. The program is funded by a \$1-per-head assessment on producers selling cattle in the U.S. as well as an equivalent assessment on importers of cattle, beef, and beef products.

Importers pay assessments on imported cattle, beef, and beef products. U.S. Customs and Border Protection collects and remits the assessment on imported cattle, beef, and beef products. The term "importer" is defined as "any person who imports cattle, beef, or beef products from outside the United States" [7 CFR 1260.117]. Imported beef or beef products is defined as "products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States" [7 CFR 1260.121].

On March 16, 2016, AMS published a proposed rule in the Federal Register [81 FR 14022] amending 7 CFR 1260.172 of the Order to add six HTS codes for imported veal and veal products. On May 6, 2016, AMS announced in a Notice to Trade that it was withdrawing the proposed rule because an error was discovered in the imported veal carcass weight. AMS also announced at that time that it intended to

publish another proposed rule with the correct carcass weight and to include the formula and an explanation of how the new assessment rates are calculated. On June 30, 2016, AMS published the withdrawal notice in the Federal Register [81 FR 42576] and on August 23, 2016, published the corrected proposed rule in the Federal Register [81 FR 57495].

The Act requires that assessments on imported beef and beef products and veal and veal products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents.

Prior to publishing the March 16, 2016, proposed rule, the U.S. Department of Agriculture (USDA) received information from the Board regarding assessments on imported veal. The Board requested expanding the number of HTS codes for imported veal and veal products in order to capture product that is not currently being assessed and to update the live animal equivalency rate on imported veal to reflect the same assessment as domestic veal and veal products. The Board also suggested that AMS update the dressed veal weight to better reflect current dressed veal weights. The Board recommended using an average dressed veal weight from 2010 to the most current data. The Board stated that establishing an average over this period of time takes into account short-term highs and lows due to the cattle cycle, weather effects, and feed prices. In this final rule, the average dressed weight used to determine the assessment on imported veal and veal products is 154 pounds.

In order to convert carcasses and cuts back to a live animal equivalency,

conversion factors are used. The conversion factor takes into account what is lost (feet, head, tail, hide, internal organs, and bone for boneless product) as the veal is processed into carcasses, bone-in cuts, and boneless cuts.

For bone-in carcasses and cuts, a one-to-one ratio is used to convert product weight to a live animal equivalent. For boneless veal cuts, the conversion factor “adds back” the weight of the bones removed from the product.

While the regulatory text in the proposed rule [81 FR 57495] includes two brief tables containing only the specific changes and additions, the regulatory text in this final rule includes comprehensive tables incorporating the changes and additions within previously existing tables that were never intended to be deleted.

Finally, upon further review of this final rule and the Order, AMS discovered that the seven digit HTS codes listed under section 1260.121, which defines the term “Imported beef or beef products,” are no longer in use and obsolete. Those codes were replaced by 10 digit HTS codes currently found in section 7 CFR 1262.172(b)(2) of the Order. As a result, AMS is amending the definition by removing those obsolete HTS code references. No other changes are made to the definition.

Summary of Comments

On August 23, 2016, AMS published a proposed rule with a request for public comment. AMS received four timely comments. Three comments were received from the Board and national veal and beef industry organizations that were relevant to the proposed rule. One comment was outside the scope of the rulemaking.

Three commenters discussed the conversion factor for bone-in and boneless veal

cuts. The commenters agreed with USDA's conversion factor for bone-in veal cuts. However, the commenters disagreed with USDA's conversion factor used for boneless imported veal cuts.

In the proposed rule, AMS used the conversion factor of 1.32 based on Table 7 (Factors used to convert pounds of carcass weight to retail and trimmed, boneless equivalent weights for red meats) of the "Economic Research Service Agricultural Handbook Number 697, Weights, Measures, and Conversion Factors for Agricultural Commodities and Their Products (June 1992)" (Handbook). However, the three commenters suggested that AMS should use the conversion factor of 1.46 for veal grading choice and good from Table 10 (Factors for converting pounds of boneless meat to untrimmed bone-in equivalent) of the Handbook because the conversion factor of 1.32 converts the boneless veal back to 0.904 pounds of bone-in veal rather than one pound. The conversion factor of 1.46 (proposed by the commenters) converts 0.685 pounds of boneless veal back to one pound of bone-in veal based on the equation: $0.685(1.46) = 1.0$.

AMS believes the comments have merit. Accordingly, the new assessment rates for veal and veal products will be:

Carcass and Bone-in Cuts

$$\frac{1.00}{154} (2.2046 \text{ lbs/kg}) = 0.01431558 \text{ cents/kg}$$

Boneless Cuts

$$\frac{1.46}{154} (2.2046 \text{ lbs/kg}) = 0.02090075 \text{ cents/kg}$$

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR part 1260 as follows:

PART 1260 – BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. Revise § 1260.121 to read as follows:

§ 1260.121 Imported beef or beef products

Imported beef or beef products means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more numbers in the Tariff Schedule of the United States.

3. Amend § 1260.172 by revising paragraph (b)(2) to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

- (2) The assessment rates for imported cattle, beef, beef products, are as follows:

Imported Live Cattle	
HTS Number	Assessment rate per head
0102.10.0010	\$1.00
0102.10.0020	\$1.00

0102.10.0030	\$1.00
0102.10.0050	\$1.00
0102.90.2011	\$1.00
0102.90.2012	\$1.00
0102.90.4024	\$1.00
0102.90.4028	\$1.00
0102.90.4034	\$1.00
0102.90.4038	\$1.00
0102.90.4054	\$1.00
0102.90.4058	\$1.00
0102.90.4062	\$1.00
0102.90.4064	\$1.00
0102.90.4066	\$1.00
0102.90.4068	\$1.00
0102.90.4072	\$1.00
0102.90.4074	\$1.00
0102.90.4082	\$1.00
0102.90.4084	\$1.00

Imported Beef and Beef Products	
HTS Number	Assessment rate per kg
0201.10.0510	.01431558
0201.10.0590	.00379102
0201.10.1010	.01431558
0201.10.1090	.00379102
0201.10.5010	.01431558
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5000	.00379102
0201.20.5010	.01431558
0201.20.5020	.01431558
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787

0201.30.5000	.00511787
0201.30.5010	.02090075
0201.30.5020	.02090075
0201.30.8090	.00511787
0202.10.0510	.01431558
0202.10.0590	.00379102
0202.10.1010	.01431558
0202.10.1090	.00370102
0202.10.5010	.01431558
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102
0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5000	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5000	.00511787
0202.30.5010	.02090075
0202.30.5020	.02090075
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0900	.00663428
1602.50.1020	.00663428
1602.50.1040	.00663428
1602.50.2020	.00701388
1602.50.2040	.00701388
1602.50.6000	.00720293

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Dated: May 23, 2017

Bruce Summers
Acting Administrator
Agricultural Marketing Service

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